06.24.05

IN THE UNITED STATES PATENT AND TRADEMARK OFFIC

In re application of

KIAN TENG ENG ET AL.

Serial No. 09/766,477 (TI-22944.2)

Filed January 19, 2001

For: VERTICAL BALL GRID ARRAY INTEGRATED CIRCUIT PACKAGE

Art Unit 2827

Examiner James M. Mitchell

Customer No. 23494

Mail Stop Petitions
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

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Jay M. Cantor, Reg. No. 19,906

Sir:

PETITION TO CONSIDER DECLARATION OF INTERFERENCE

Applicants, through their attorney, hereby petition the Commissioner for Patents to require that the examiner consider the request of record to declare an interference and declare an interference in the event all conditions therefor have been met. Please charge any costs to Deposit Account No. 20-0668.

The facts are that a request was made for declaration of an interference in the subject application in a paper entitled Amendment Under 37 C.F.R. 1.116 mailed March 1, 2004 in which claims from Patent No.6,418,033 of Rinne were copied for purposes of interference with the required demonstration of readability of the subject disclosure and a

Supplemental Amendment Under 37 C.F.R. 1.116 mailed March 5, 2004 copying restricted claims from the application of Rinne which were withdrawn from consideration in the event a divisional application was filed therefore. To date, the examiner has improperly refused to consider the request for interference, utilizing the improper excuse that the interfering claims are to an invention different from that elected.

37 C.F.R. 1.607 is very clear in stating that

"(a) An applicant may seek to have an interference declared between an application and an unexpired patent by,

(1) Identifying the patent,

(2) Presenting a proposed count,

(3) Identifying at least one claim in the patent corresponding to the proposed count,

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in its application that corresponds to the proposed count, and, if any claims of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

(5) Applying the terms of any application claims,

(i) Identified as corresponding to the count, and

(ii) Not previously in the application to the disclosure of the application.

The above requirements have been complied with in the papers filed and mentioned above.

Section (b) of 37 C.F.R. 1.607 states that examination under the above noted conditions should be handled with dispatch. This has not been done to date.

It is clear that nowhere in 37 C.F.R. 1.607 is there any stated condition whereby consideration of the request for interference should not be handled with dispatch. Accordingly, the refusal to do so in this application is contrary to the Rules.(37 C.F.R.).

Section 2307 of the M.P.E.P is quite clear in setting forth the requirements of 47 C.F.R. 1.607. Nowhere is there any statement allowing lack of consideration of the requested interference. In fact, not only is the request for interference stated to be handled with dispatch in the Rules, but an additional section of the M.P.E.P. under this section is listed as "SPECIAL DISPATCH"..

In view of the above facts, it hereby petitioned that the examiner be ordered to consider the requested declaration of interference and declare the interference if the examiner agrees that the facts are as stated by applicants herein.

Respectfully submitted

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